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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALISA WOLF, *et al.*

Plaintiffs,

V.

JOSEPH "JOEY" TRAVOLTA, et al.

Defendants.

CASE NO. 14-CV-00938-CAS (PJWx)
[Hon. Christina A. Snyder]
[Courtroom 5-2nd Floor]

Action Filed: February 6, 2014
4AC Filed: August 5, 2015
Trial Date: February 9, 2016

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

**DATE: January 11, 2016
TIME: 10:00 A.M.
DEPT.: Court Room 5**

1 **I. Introduction.**

2 Plaintiffs Alisa Wolf and her organization Actors for Autism admit that
 3 Defendant Travolta was the first to come up with the idea for a practical film school,
 4 that he first obtained the funding commitment for such a program with the local
 5 Regional Center, that he was the first to be vendored for such a program, and that
 6 Plaintiffs knew his program was “identical” to the one copyrighted by Wolf and
 7 “suspected Defendant Travolta had merely changed the cover sheet” for his
 8 submission to the Regional Center. Rather than pursue claims based on
 9 misappropriation of business opportunities or of program materials at that time in
 10 2006 and 2007, Plaintiffs decided to “not pursue a lawsuit at this time, rather to
 11 write a different program to submit to the regional center,” despite believing that “it
 12 seemed clear that Defendant Travolta was using the program.”

13 Plaintiffs attempt to argue that their delay in bringing suit is justified by
 14 efforts taken by Wolf to determine that the copyrighted program materials were not
 15 themselves being used. However, Plaintiffs admit that Wolf still believed Travolta
 16 was harming Plaintiffs by taking their business opportunities and ideas in violation
 17 of fiduciary duties. As a result, Plaintiffs were on more than sufficient notice of
 18 their claims against Defendants in 2007 such that they should have discovered the
 19 copying and all other claims related to Defendants’ vendorization of the practical
 20 film school in 2007, and the statute of limitations has run on all claims except
 21 infringement within the three year look back.

22 In response to clear evidence of copying of third party materials by Plaintiff
 23 Wolf, such that the originality of the registered works is minimal, Plaintiffs rely
 24 solely on objections to the timeliness and quality of evidence that Wolf failed to
 25 produce and apparently let wither for years before bringing her claims for
 26 infringement. These objections should be overruled and the clear impact of the third
 27 party works should carry the day- Plaintiff’s claimed and registered works lack
 28 sufficient originality to maintain a copyright or this infringement action.

1 Defendants are entitled to summary judgment on all of Plaintiffs' claims.

2 **II. Undisputed Facts.**

3 Plaintiffs admit that:

4 • Travolta had already described his vision for a “practical film school” and
5 worked with disabled children prior to meeting Plaintiff (SGD 1);
6 • Wolf and Travolta then worked together to incorporate autistic children into
7 Travolta’s acting program (SGD 2);
8 • Travolta aided Wolf in setting up co-Plaintiff Actors for Autism (SGD 3);
9 • Travolta and Wolf both attended the 2005 meeting in which the practical
10 filmmaking vocational program for disabled young adults was first presented to
11 the Regional Center (SGD 4, 5);
12 • Travolta obtained the financing commitment for the practical filmmaking
13 program from the Regional Center (SGI 7);
14 • Travolta (and not Wolf) sought to obtain a slate of films that would serve as the
15 “backbone” for the practical film program being vendedored by the Regional
16 Center (SGI 8);
17 • Travolta parted ways with Plaintiffs in summer of 2006 (SGI 9);
18 • Travolta continued working with the Regional Center after parting with
19 Plaintiffs, leading to his vendorization for a practical film making program in
20 January 2007 (SGI 12);
21 • Plaintiffs submitted their own written application and one of the registered
22 program design documents to the Regional Center in September 2006 (SGI 13);
23 • Plaintiffs were informed that the Regional Center was working with Travolta on
24 a “program identical” to the one submitted by Plaintiffs (SGI 14);
25 • Plaintiff Wolf “suspected that Defendant Travolta had merely changed the cover
26 sheet” to the program service design submitted by Plaintiffs in seeking
27 vendorization of his program (SGI 14);
28

- 1 • At a December 2006 AFA Board Meeting, after receiving legal advice on
 2 possible infringement claims, Plaintiffs opted to forgo claims against Travolta for
 3 “taking the program” and instead it “was decided by the board of directors to not
 4 pursue a lawsuit at this time, rather to write a different program to submit to the
 5 regional center” over statements by Wolf that “it seemed clear that Defendant
 6 Travolta was using the program” (SGI 15);
 7 • Plaintiffs subsequently asserted directly to the Regional Center that “All
 8 documents submitted” to the Regional Center were “copywritten by me [Wolf]
 9 and registered with the U.S. State Department,” that “Mr. Travolta broke his
 10 fiduciary duty when he continued to have conversations with Lanterman
 11 Regional Center about our program for his own personal gain,” that after Mr.
 12 Travolta left AFA “any further conversations regarding this program should have
 13 ceased,” asserting that by law “any and all concepts, programs and services
 14 which are developed under a public charity belong to the charity” and that a
 15 “board member may not take an idea, concept, program, or service for personal
 16 gain.” (SGI 16);
 17 • Plaintiffs met with regional center representatives in person and agreed to
 18 withdraw their appeal and instead submit a different 2-year vocational program
 19 that would include film, television, and animation vocational training (SGI 17);
 20 • Following this meeting, Plaintiff Wolf still believed that Travolta was harming
 21 Plaintiffs by taking their opportunities and ideas and breaching fiduciary duties
 22 to them, despite claiming to have received reassurances that the program service
 23 design was not copied (SUF 18).
 24 In sum, it is undisputed that in 2006 Plaintiffs believed that Travolta had
 25 submitted the copyrighted materials to the Regional Center by just placing his name
 26 on them (i.e. making unauthorized copies of the works), had asserted such claims to
 27 the Regional Center by January 2007, accused Travolta of copying the program
 28 design materials at issue in this case in 2007 and asserting that his “breach of

1 fiduciary duties” to Plaintiffs involved improperly taking their “copywritten” for his
 2 own use and submission to the Regional Center. Moreover, Plaintiffs admit that
 3 despite claims they were reassured by Travolta that he had not copied the materials¹,
 4 they continued to believe that Travolta was harming Plaintiffs by taking their
 5 opportunities and ideas and breaching fiduciary duties.

6 Plaintiffs also fail to factually dispute that multiple different documents
 7 published on the internet, including documents pre-dating the registered works and
 8 documents predating Defendants’ internet publication of their program design
 9 materials, all include verbatim language appearing in the registered works. See SGI
 10 32-34, 36-38.

11 **III. Plaintiffs Knew of Their Claims in 2006-2007 and Did Not Act.**

12 It is undisputed that Plaintiffs demonstrated awareness of potential infringement
 13 by Defendants in December 2006 and made an explicit decision to not pursue claims
 14 at that time. It is further undisputed that despite allegedly being assured that
 15 Defendants were not using their program materials, Plaintiffs still believed they
 16 were being wronged by Travolta’s alleged taking of business opportunities and ideas
 17 and his alleged breach of fiduciary duties. Plaintiffs knew they had claims against
 18 Defendants arising out of the same transactions and events in which they assert that
 19 Travolta made infringing copies of the works at issue in this case- the vendorization
 20 of the practical filmmaking program using program service design materials alleged
 21 to infringe Wolf’s copyrights. Plaintiff also agree that rather than diligently pursue
 22 those claims, they opted to instead focus on starting a new competing program that
 23 would incorporate filmmaking into a larger curriculum.

24 At a minimum, Plaintiffs’ claims accrued when they “demonstrated awareness of
 25 any purported” wrongdoing in their documents, especially where they have “opined
 26 that a suit should [or could] be filed against” Defendants. *Daly v. Pearl Spirits, Inc.*,

27
 28 ¹ Defendants dispute that any such assurances were ever made. Defendants’ Response to
 Plaintiffs’ Additional Material Facts 45, 47.

1 438 F. App'x 644, 645 (9th Cir. 2011). Moreover, upon learning of the allegedly
 2 wrongful conduct by Defendant Travolta, Plaintiffs had “enough information to
 3 warrant an investigation” that should have uncovered the alleged infringement with
 4 a simple request for a copy of the vendored program design. *See id.* Plaintiff’s
 5 consultation with an attorney that confirmed the viability of their claims further
 6 demonstrates their knowledge of their claims in 2006. *See id.*

7 Plaintiffs do not dispute that they were suspicious that Defendant Travolta had
 8 harmed them by infringing copyright(s), taking ideas, breaching fiduciary duties,
 9 and improperly taking business opportunities. As a result, Plaintiffs were required
 10 to “to take the steps a reasonably diligent plaintiff would take in investigating its
 11 claims” that would be based on their suspicion in 2006 and 2007. *Gabriel Techs.*
 12 *Corp. v. Qualcomm Inc.*, 857 F. Supp. 2d 997, 1006 (S.D. Cal. 2012). Plaintiffs
 13 could have easily discovered the alleged infringement at the time of the February
 14 2007 meeting with Karen Ingram by simply asking to see a copy of the program
 15 service design used by Travolta to vendorize with the Regional Center. Instead,
 16 Plaintiff claims to have relied on (undocumented) representations from potentially
 17 infringing parties that they had not used her work, including an alleged
 18 representation by Ms. Ingram that does not appear in the letter confirming the
 19 February 2007 meeting’s events. As such, Plaintiffs failed to take the steps a
 20 “reasonably diligent plaintiff would take in investigating its claims,” and and their
 21 “failure either to proceed against [Defendants] based on the information known to it
 22 or to undertake readily available means of confirming [the infringement] was so
 23 unreasonable that summary judgment is appropriate.” *Id.*

24 Additionally, where, as here, “testimony and corroborating documentary
 25 evidence establishes that Plaintiffs actually considered its potential claims against”
 26 Defendants, there can be no dispute that the statute of limitations began to run at that
 27 time. *Gabriel Techs. Corp.*, 857 F. Supp. 2d at 1008. Plaintiffs do not dispute that
 28 in 2006 they had received legal advice on potential claims based on the copying of

1 the program by Travolta, considered the advice, and decided not to pursue the
 2 claims.

3 Plaintiffs' citations to *William A. Graham Co. v. Haughey* are unavailing in
 4 preventing the obvious conclusion that Plaintiffs were suspicious of the alleged
 5 infringement and wrongdoing in 2006 and 2007, and should have reasonably
 6 uncovered the alleged infringement by undertaking a reasonable investigation.
 7 Unlike *Haughey*, "the storm warnings arose after the alleged wrongs" had already
 8 occurred; Plaintiffs became suspicious and were informed of the "identical
 9 program" after Travolta had already submitted documents for vendorization, and
 10 Plaintiff's meeting with the Regional Center in February 2007 occurred after
 11 Defendants were fully vendored in January of the same year. SGD 15-17; *c.f.* 568
 12 F.3d 425, 439 (3d Cir. 2009) (no "duty to inquire into future wrongdoing," but
 13 potential plaintiff could be charged with knowledge when "inquiry notice arose for
 14 past wrongs.") Furthermore, Plaintiffs did not just have "evidence that a person is a
 15 bad actor in some general sense," but instead had specific suspicions that
 16 "Defendant Travolta had merely changed the cover sheet" to the program service
 17 design submitted by Plaintiffs, i.e. that Defendants were making unauthorized
 18 derivative works from the claimed work(s). SGD 14; *c.f. Haughey*, 568 F.3d at 440.

19 Nor is the citation to Docket 79 or *Aoki v. Gilbert*², helpful here. Plaintiffs claim
 20 that the breach of fiduciary duty claim survives, without identifying which, if any,
 21 "of Travolta's alleged breaches of fiduciary duty are not time-barred." Dkt. No. 79
 22 at 16. By failing to do so, Plaintiffs have essentially conceded that the breach of
 23 fiduciary duty claim is time barred.

24 In short, there is no issue of material fact that saves any of Plaintiffs' state law
 25 claims or any infringement claims that occurred more than
 26
 27
 28

² No. 2:11-CV-02797-TLN-CK, 2014 WL 3689345, at *1 (E.D. Cal. July 23, 2014)

1 **IV. Plaintiffs Do Not Explain the Verbatim Copying Within the Works.**

2 In addition to failing to create a material issue of fact regarding the time bar
 3 applicable to all of the state law claims, Plaintiffs make no attempt to explain how
 4 the registered works contain verbatim language from multiple sources on the
 5 internet and elsewhere predating the works or Defendants' internet publication of
 6 allegedly infringing works. Instead, Plaintiffs attempt to rely solely on objections to
 7 the admissibility of the clear evidence that Plaintiffs' claimed works are unoriginal.

8 Plaintiffs' objection to the disclosure of the materials demonstrating Wolf's
 9 copying of the works are without merit, they were disclosed to Plaintiffs well before
 10 the discovery cutoff. Defendants first disclosed the evidence of copying by Wolf to
 11 Plaintiffs on September 15, 2015. Supplemental Declaration of Steven T. Gebelin
 12 in Support of Summary Judgment, ¶ 2. Specifically, Defendants sent Plaintiffs an
 13 email and documentation referencing multiple works on the internet (with URLs)
 14 that clearly were verbatim copied by Wolf's claimed works. *Id.* Plaintiffs again
 15 received the evidence of copying when Defendants served the expert report of David
 16 Helfant, which also referenced each of the documents cited in the motion for
 17 summary judgment as containing verbatim language to Wolf's claimed works. *Id.*
 18 ¶ 3. Plaintiffs were placed on notice of the evidence, provided links to the evidence,
 19 and any alleged failure to produce the documents created no surprise that would
 20 warrant exclusion. *See, e.g. Blair v. CBE Grp., Inc.*, 309 F.R.D. 621, 626 (S.D. Cal.
 21 2015) (no exclusion of undisclosed expert that "does not prejudice Defendant"
 22 based on "the interests of justice").

23 Next, Plaintiffs' argument about the "presumption of validity" based on the
 24 registration is not helpful. A "certificate of registration from the U.S. Copyright
 25 Office entitle[s] [plaintiff] to a 'rebuttable presumption of originality'." *Ets-Hokin*
 26 *v. Skyy Spirits, Inc.*, 225 F.3d 1068, 1075 (9th Cir. 2000). "[T]he statutory
 27 presumption of validity can be rebutted if the alleged infringer demonstrates that
 28 the plaintiff's work 'is not original but copied from another's work.' " *Lamps Plus*,

1 *Inc. v. Seattle Lighting Fixture Co.*, 345 F.3d 1140, 1145-46 (9th Cir. 2003)
 2 (copyright in lamp design consisting of compilation derived from other works was
 3 invalid) (citations omitted). Here, as in Lamps Plus, the evidence demonstrates that
 4 the Plaintiff's compilation lacks sufficient originality to merit a copyright of its own.

5 Finally, Plaintiffs' bare arguments that originality is a "question of fact
 6 generally appropriate for the jury to decide," (Opposition at 22:7-9) ignores the clear
 7 evidence of copying in the record on this motion that shows that preexisting works
 8 "pervades the derivative work," claimed by a plaintiff and the "Plaintiff used the previous
 9 work without authorization, no copyright protection is afforded" to any remaining
 10 elements of the plaintiff's derivative work. *Sobhani v. @Radical.Media Inc.*, 257 F. Supp.
 11 2d 1234, 1239-41 (C.D. Cal. 2003) (no infringement of "spec" Jack in the Box commercial
 12 that incorporated portions of preexisting commercials) (citing *Pickett v. Prince*, 207 F.3d
 13 402 (7th Cir.2000); *Eden Toys, Inc. v. Florelee Undergarment Co.*, 697 F.2d 27, 34 n. 6
 14 (2d Cir.1982); 1-3 Nimmer on Copyright § 3.06 (2002) ("copyright protection does not
 15 extend "to derivative works if the pre-existing work *tends to pervade* the entire derivative
 16 work.")).

17 Plaintiff's bare assertion that she did not copy the works from other sources foes not
 18 create a material issue of fact in the face of competent evidence that third party documents
 19 predating the works she claims have verbatim language. The works are unoriginal and not
 20 entitled to copyright protection.

21 **V. Conclusion.**

22 Plaintiffs have failed to make a dispute of material facts sufficient to prevent
 23 summary judgment. They admit suspicions of copyright infringement, breaches of
 24 fiduciary duty, and taking of ideas in 2006 and 2007 that put them on notice, and
 25 they chose not to pursue claims at that time and failed to even attempt to obtain a
 26 copy of Travolta's program service design to determine whether it was actually
 27 different from Wolf's claimed work. Plaintiffs also fail to provide any explanation
 28 for the rampant unauthorized copying within Wolf's claimed works, which

1 disproves Wolf's claim to have not copied from any source and overcomes the
2 presumption of originality from the 2006 registration.

3 For the foregoing reasons, the Court should grant Defendants' Motion and
4 Grant Summary Judgment by finding each of the state law claims barred by the
5 applicable statutes of limitation, the copyright claims subject to a statute of
6 limitations cutoff of 3 years prior to filing this action, and by finding that Plaintiff's
7 Registered Works are unauthorized derivative works that lack sufficient originality
8 to support a copyright or infringement claim.

9
10 Dated: December 28, 2015

Respectfully submitted,

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By: /s/

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